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DISCLAIMING ANY INTERESTS OF THE UNITED STATES IN CERTAIN LANDS ON SAN JUAN ISLAND, WASHINGTON, AND FOR OTHER PURPOSES

JULY 2, 1991.—Ordered to be printed

Filed under authority of the order of the Senate of June 24 (legislative day, June 11), 1991

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 427]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 427) to disclaim any interests of the United States in certain lands on San Juan Island, Washington, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE OF THE MEASURE

The purpose of H.R. 427, as ordered reported, is to assist in clearing the title to certain Federal lands in the community of Friday Harbor, on San Juan Island, Washington.

BACKGROUND AND NEED

Pursuant to a 1921 Act to Congress (42 Stat. 173), certain lands on San Juan Island in Puget Sound were conveyed by the United States to the State of Washington for use by the University of Washington for a marine sciences laboratory. Under the terms of the 1921 Act, the lands are subject to reversion to the United States if they are used for any purposes other than the laboratory.

The boundaries of the grant were based on 1874 surveys by the Army and the General Land Office (the predecessor or the Bureau of Land Management). However, in 1919 the county surveyor conducted a survey which identified the supposed boundary of the Federal lands as being further east than the line established by the earlier Army/GLO survey.

Subsequent subdivisions and development in the area were based on the erroneous 1919 line identified by the county surveyor. As a

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result, there have been a number of encroachments on the lands granted to the State pursuant to the 1921 Act.

In 1975, the University of Washington sought assistance from the Bureau of Land Management to determine how to deal with the encroachments. In response, the BLM in 1983 completed a preliminary resurvey of the boundary of the lands granted in 1921.

The encroachments are in a residential neighborhood, and constitute clouds on the titles of about 14 occupied properties. The State of Washington cannot remove these clouds by conveying the encroachments to the occupants of these properties, because an attempt to do so would cause the reversion of at least these portions (and possibly the entire tract granted in 1921) to the United States. Although the Federal Government could, following the reversion, sell the reverted lands for fair market value, it would be preferable to resolve the situation in a way that affords relief to the occupants of the encroached lands without affecting the interests of the State and the University with regard to the marine science laboratory. H.R. 427 is intended to provide such relief.

Legislative History

H.R. 427 passed the House of Representatives by a voice vote on April 24, 1991. The Subcommittee on Public Lands, National Parks and Forests held a hearing on the bill on May 21, 1991. The bill is similar to legislation (H.R. 2566) which passed both the House and Senate during the 101st Congress, but was not enacted due to the inclusion of non-game germane amendments.

At the business meeting on June 12, 1991, the Committee on Energy and Natural Resources ordered H.R. 427 favorably reported.

Committee Recommendations and Tabulation of Votes

The Committee on Energy and Natural Resources, in open business session on June 12, 1991, by a unanimous vote of a quorum present, recommends that the Senate pass H.R. 427 as described herein.

The roll call vote on reporting the measure was 20 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley*	
Mr. Bingaman	
Mr. Wirth	
Mr. Conrad*	
Mr. Akaka	
Mr. Fowler*	
Mr. Shelby	
Mr. Wellstone*	
Mr. Wallop	
Mr. Hatfield	
Mr. Domenici*	

Mr. Murkowski*
Mr. Nickles
Mr. Burns
Mr. Craig
Mr. Seymour*
Mr. Garn*

*Indicates voted by proxy.

Section-by-Section Analysis

Section 1 defines certain terms used in the bill.

Section 2 directs the Director of the Bureau of Land Management, within one year after the date of enactment of this Act, to complete a survey of lands granted by the United States to the State of Washington pursuant to the 1921 Act, and to prepare a survey plat detailing the portions of such lands that have been encorached upon. The section also requires that the Federal government shall not bear more than 50 percent of the cost of the survey.

Section 3(a) provides that the reversionary provisions of the 1921 Act shall not apply to encroached lands.

Subsection (b) disclaims, subject to the limitations of subsection (c), all right, title, and interest of the United States to the encroached lands. Within 1 year after the survey plat is prepared all right, title, and interest of the United States in such lands shall vest in the University of Washington.

Subsection (c) provides that the provisions of subsections (a) and (b) shall not take effect unless, within 6 months after the date of enactment of this Act, the State and the University of Washington have entered into a binding agreement that neither party will convey any part of the encroached lands to any party other than the occupants of such land.

The State and University must also agree to reimburse the Secretary for the administrative costs of implementing this Act plus one-half of the cost of preparing the survey required in section 2. In addition, the State and University must pay the Secretary an amount equal to the total amounts that the State and the University receive as consideration for some or all of the encroached lands conveyed to the occupants, less reasonable costs incurred by the State and the University incident to such conveyance.

Finally, the subsection provides that all amounts received by the Secretary pursuant to this subsection are to be retained by the Secretary and used, subject to appropriations, for the management of public lands administered by the Bureau of Land Management.

Section 4 states that the survey plat prepared pursuant to section 2 shall be available for public inspection in the offices of the Secretary and the Washington State Director of the Bureau of Land Management. In addition, the Secretary is to transmit copies of the survey plat to the University of Washington and appropriate State and County officials.

Section 5 amends the 1921 Act to add a new section 2. The new section provides that if any portion of the land conveyed pursuant to the 1921 Act becomes contaminated with hazardous substances, the land shall not, under any circumstances, revert to the United States. The section also provides that if the Secretary finds that

the conveyed lands have been used for purposes in consistent with the purposes of this Act, or which may result in contamination with hazardous substances, the State shall be liable to pay to the United States the fair market value of the land.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 17, 1991.

Hon. J. Bennett Johnston, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 427, an act to disclaim any interests of the United States in certain lands on San Juan Island, Washington, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources on June 12, 1991. We estimate that enactment of H.R. 427 would result in no significant costs or savings to the federal government or to state or local governments.

H.R. 427 would vest title to certain federal land on San Juan Island in the University of Washington; this land would be identified in a survey to be conducted by the Bureau of Land Management (BLM). The land would be exempted from current restrictions that prevent recipients of federal land from transferring it to other parties. The effect of these changes would be to allow the State of Washington and the university to transfer ownership of the land to the current occupants. Because of faulty surveys conducted early in this century, federal land granted to the State of Washington was erroneously subdivided and developed for private homesites.

The state and the university would be required to share in the survey costs and to pay to the United States any profits they received from selling the land to the occupants. Finally, H.R. 427 would protect the U.S. government from liability for any contamination of the land resulting from disposal of hazardous or toxic materials.

Based on information from the BLM, CBO estimates that enactment of H.R. 427 would not result in any receipts or significant additional costs to the federal government.

This legislation does not affect direct spending or receipts and therefore would not affect pay-as-you-go scoring.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo.

Sincerely,

Robert D. Reischauer,
Director.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carry-

ing out H.R. 427. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 427, as ordered reported.

Executive Communications

On May 9, 1991, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on H.R. 427. These reports had not been received at the time the report on H.R. 427 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Land Management at the Subcommittee hearing follows:

> Statement of Michael Penfold, Assistant Director, Land and Renewable Resources, Bureau of Land Management, Department of the Interior
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> I appreciate the opportunity to appear here today to discuss H.R 427.
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> The Bureau of Land Management (BLM) has no objection to the enactment of H.R. 427 as passed by the House of Representatives if it is amended to address our concern. A summary of the Act is attached to this statement.
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> Under the Act of August 23, 1921, Congress granted to the University of Washington certain properties in San Juan County, Washington, for the operation of a marine sciences laboratory. The Act contained a reverter to the United States, should the lands be used for any purpose other than those originally specified in the Act.
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> As a result of an erroneous private survey for a residential subdivision, there are now 14 or more individual parcels of lands, encompassing approximately 13 acres, encroaching along the west boundary of the land patented to the University of Washington that are occupied by persons who claim ownership. Because the land is not being used for the purposes set out in the 1921 Act, the University may have lost the right to retain legal title to the land even though the change in use was an unintentional violation of the provisions of the 1921 Act. The BLM has been working with the University for several years to try to resolve the problem and has not issued a Decision of Divestiture to formally notify the State of the reversion
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> We concur with the provision of the bill which directs the BLM to complete a survey of lands granted to the State of Washington by the 1921 Act, and to prepare a map detailing those portions of the lands that have been encroached upon. We appreciate that H.R. 427 now provides that the Secretary shall be reimbursed for the ad-

ministrative costs of implementing the Act. However, we object to the proviso in that section that would require the Federal Government to pay 50 per centum of the cost of survey. We believe there is no rationale or justification for the Federal Government to pay any portion of the costs of the survey. The State of Washington, the University of Washington and the occupants of the encroached lands are the beneficiaries of the survey. There is no benefit to the Federal Government which is merely rendering the service of doing an official survey of the encroached lands. The survey will enable the University and the occupants to know exactly what lands are encroached. We, therefore, urge that the proviso in section 2 and the limit on reimbursement for survey costs in section 3(c)(1)(B) of H.R. 427 be deleted, and that the bill be amended to require the beneficiaries of the bill to pay the total cost of the survey.

We strongly support the amendment contained in section 5 of the bill which would prevent any lands that are contaminated with hazardous materials from reverting to the United States.

We believe there is a typographical error in section 3(c)(1)(B). The second "of" on page 4, line 14 should be "or".

H.R. 427 has no known impacts under the pay-as-you-go provisions of the 1990 Budget Enforcement Act.

This concludes my statement. I will be pleased to answer any questions you may have.

SUMMARY OF H.R. 427

Section 1 would provide definitions for a number of terms used in the bill. One of those terms, "encroached lands", is defined as those portions of the lands granted to the State of Washington by the Act of August 23, 1921, that are designated as "Encroached Lands" on a survey plat to be prepared by the Secretary of the Interior through the Bureau of Land Management (BLM).

Section 2 would require the completion of a survey of the lands conveyed to the State of Washington by the Act of August 23, 1921, and a map detailing the encroached lands. It would provide that not more than 50 percent of the cost of survey shall be paid by the Federal Government.

Section 3(a) would exempt the encroached lands, subject to the right of the United States to reclaim the lands if they are needed for military purposes, from the reversionary provisions in the 1921 Act, and from a new provision related to hazardous materials which would be added to the 1921 Act by Section 5 of H.R. 427.

Section 3(b) would provide that the United States disclaims all right, title, and interest in the encroached lands, and that effective one year after the survey plat is prepared, all right, title, and interest of the United States in such lands shall vest in the University of Washington.

Section 3(c) would provide that the exemptions and vesting of the lands under subsections (a) and (b) could not take effect unless, within six months after enactment of H.R. 427, the State and the University have entered into a binding agreement with the Secretary of the Interior regarding the lands. Under that agreement, the State and the University would have to agree to accept as accurate and conclusive the map referred to in the Act; not to attempt to convey or otherwise transfer the encroached lands to any party other than the occupants; to reimburse the Secretary for the administrative costs of implementing this Act plus half the costs of the survey required by Section 2; and to pay the Secretary any amounts received as consideration for conveyance of some or all of the encroached land in excess of reasonable costs (including the survey and other costs required by this Act) incurred by the University and the State incident to conveying the land. The Secretary would be required to retain all such payments and, subject to appropriation, use the moneys for the management of public lands managed by the BLM.

Section 4 would require the survey plat of the encroached lands to be available for public inspection in the offices of the Secretary of the Interior and the BLM State Director for the State of Washington. The Secretary would be required to transmit copies of the survey plat to the University and to appropriate officials of the State and of San Juan County, Washington.

Section 5 would amend the 1921 Act to provide that, notwithstanding any other provision of that Act, any land granted or conveyed to the State by this Act that is or shall become contaminated with hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act, or that has been used for purposes that the Secretary finds may result in the disposal, placement or release of any hazardous substance shall not, under any circumstances, revert to the United States. In such instances, the State would be liable to pay the Secretary the fair market value of the land, including the value of any improvements as of the date of conversion of the land to the nonconforming purpose. The Secretary would be required to retain all such payments and, subject to appropriations, use the moneys for the management of public lands. It would remain available until expended.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act, H.R. 427, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

AN ACT Providing for a grant of land to the State of Washington for a biological station and general research purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the title and fee to portions of sections one, two, eleven, and twelve of township thirty-five north, of range three west of the Willamette meridian, being a military reservation at San Juan Island, in the county of San Juan, State of Washington, containing about four hundred and eighty-four acres, be, and the same are hereby, granted, subject to the conditions and reversion hereinafter provided for, to the State of Washington for the use of the University of Washington, for the purpose of a biological station and for general university research purposes; subject, however, to the right of the United States to at any and all time and in any manner assume control of, hold, use, and occupy without license, consent, or leave from said State or university any or all of said land for any and all military, naval, or lighthouse purposes, freed from any conveyances, charges, encumbrances, or liens made, created, permitted, or sanctioned thereon by said State or univerity. *Provided,* That the United States shall not be or become liable for any damages or compensation whatever to the said State of Washington or the University of Washington for any future use by the Government of any or all of the above-described land for any of the above-mentioned purposes. *Provided further,* That if said lands shall not be used for the purposes hereinabove mentioned the same or such parts thereof not so used shall revert to the United States.

SEC. 2. (a) Notwithstanding any other provision of this Act, if any land, or portion thereof, granted or otherwise conveyed to the State of Washington is or shall become contaminated with hazardous substances (as defined in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601)), or if such land, or portion thereof, has been used for purposes that the Secretary of the Interior finds may result in the disposal, placement or release of any hazardous substance, such land shall not, under any circumstances, revert to the United States.

(b) If lands granted or conveyed to the State by this Act shall be used for purposes that the Secretary of the Interior finds: (1) inconsistent with the purposes of this Act, and (2) which may result in the disposal, placement or release of any hazardous substance, the State shall be liable to pay to the Secretary of the Interior, on behalf of the United States, the fair market value of the land, including the value of any improvement, thereon, as of the date of conversion of the land to the noncomforming purpose. All amounts received by the Secretary of the Interior pursuant to this subsection shall be retained by the Secretary of the Interior and used, subject to appropriations, for the management of public lands and shall remain available until expended.

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